

REMARKS

Claims 1-12 are pending in this application. Claims 1-12 are independent. In light of the remarks made herein, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections.

In the outstanding Official Action, the Examiner rejected claims 1-12 under 35 U.S.C. § 103 as being unpatentable over *Susai et al.* (USP 6,411,986) in view of *Packer* (USP 5,802,106). Applicants respectfully traverse this rejection.

Claim Rejections - 35 U.S.C. § 103

In paragraph 2 of the outstanding Official Action, the Examiner asserted that Applicants' arguments with respect to claims 1-12 have been considered but are moot in view of the new grounds of rejection. Applicants disagree with these assertions.

In the Reply filed November 2, 2004, Applicants argued that *Susai et al.* did not teach the elements the Examiner was relying on to purportedly establish *prima facie* obviousness. Specifically, Applicants argued that *Susai et al.* failed to teach or suggest an amount of transmitted segment being obtained by counting a total amount of the detected data segment. Further, Applicants argued that *Susai et al.* failed to teach or suggest the amount of transmitted bytes being obtained by calculating a difference between a sequence number of the first detected data segment and a

sum of a sequence number of the last detected data segment and a user length of the last detected data segment.

In asserting the outstanding rejection, the Examiner still relies upon *Susai et al.* and argues that *Susai et al.* teach these claim elements. However, the Examiner provides no response to the points made by Applicants in the November 2nd Reply.

Further, Applicants argued in the November 2, 2004, Reply with regard to claim 3 that the Examiner, curiously, relied on the same teachings asserted with regard to claim 1 in support of his rejection of claim 3. However, the invention as set forth in claim 3 recites, *inter alia*, a method for collecting statistical traffic data comprising detecting a SYN segment from a traffic in one of two directions on the Internet line; detecting an ACK segment and a DATA segment each of which belongs to the same connection as the detected SYN segment from the traffic; and calculating, as an amount of received data at a side which sent the detected SYN segment, a difference between the acknowledgement number of the first detected ACK segment or DATA segment and an acknowledgement number of the last detected ACK segment or DATA segment.

Applicants argued there is no teaching or suggestion in *Susai et al.* that is directed to detecting or manipulating DATA segments. Further, as communication progresses between, for example, client 1 through interface unit 202 and server S, the acknowledgement number is incremented. However, there is no teaching or suggestion of

utilizing the ACK segments to determine the amount of received data. Further, there is no teaching or suggestion in *Susai et al.* that is directed to calculating, as an amount of received data at a side which sent the detected SYN segment, a difference between the acknowledgement number of the first detected ACK segment or DATA segment and an acknowledgement number of the last detected ACK segment or DATA segment.

Again, the Examiner fails to address these arguments, asserting they are moot in view of the "new" grounds of rejection. However, the Examiner asserted the same rejection of the claim.

In addition to the above arguments, the Applicants argued that, with regard to the Examiner's rejection of claims 5 and 6, the Examiner asserted that these claims contain elements similar to those set forth in claims 1 and 2. The Examiner relied on his rejection of claims 5 and 6 for his reasoning set forth in claims 1 and 2.

However, Applicants argued that claims 5 and 6 contain elements that are not incorporated in claims 1 or 2. For example, claim 5 recites, *inter alia*, a method for collecting statistical traffic data comprising judging, at every detection of the DATA segment, whether a sequence number of the newly detected DATA segment is less than the determined sequence number at the last DATA segment detection; and obtaining, when the sequence number of the newly detected DATA segment is less than the determined

sequence number, at least one of a new amount of re-transmitted segment at a side which sent the detected SYN segment, and a new amount of re-transmitted bytes at the side.

Applicants argued that there is no judging step as recited in claim 5 in either claim 1 or claim 2. As such, Applicants cannot ascertain what portions of the references the Examiner is relying upon to teach or suggest the judging step or the obtaining step as set forth in claim 5. Additionally, claim 6 includes a judging and an obtaining step and, as such, it is unclear which portions of the references the Examiner is relying upon to teach these claim elements. Applicants requested that should the Examiner maintain his rejection of these claims, that the Examiner provide a detailed explanation of the Examiner's support including a *prima facie* case under 35 U.S.C. § 103 in a non-final Official Action.

However, the Examiner did not provide any response to this argument, and further, failed to provide any support for his rejection of claims 5 and 6 other than to, again, refer to his rejection of claims 1 and 2.

With regard to the Examiner's rejection of claim 7, the Examiner asserted that *Susai et al.* teaches the obtaining step as set forth in the claim referring to the next sequence number being a sequence number plus one, citing to col. 5, lines 8-20. Applicants disagreed with the Examiner's characterization of this reference asserting that *Susai et al.* teaches at the citation above

that the acknowledgement number includes the sequence number plus one of the last successfully received byte of data. Applicants argued that *Susai et al.* failed to teach obtaining, when both of the acknowledgment number and the window size of the newly detected two or more ACK segments are equal to the determined acknowledgment number and the determined window size, a new amount of missing DATA segment at a side which sent the detected SYN segments, by adding 1 to the last obtained amount of missing DATA segment.

Again, the Examiner fails to address these arguments, asserting they are moot in view of the new grounds of rejection. However, the Examiner asserted the same rejection of the claim.

With regard to claim 9, Applicants' argued that *Susai et al.*'s teachings of calculating a sequence number and a checksum are insufficient to teach or suggest an HTTP response time being calculated based upon a time difference from the detection of the last DATA segment to the first detection of the ACK segment. Further, Applicants argued that there is no discussion of calculating a ratio of a difference as recited in the claims. Applicants noted they were unclear as to what specific teachings the Examiner is relying upon to teach or suggest this claim element. Applicants requested that in the event that the Examiner maintains his rejection of this claim using the cited references, Applicants respectfully request that the Examiner detail those

portions of the reference the Examiner is relying upon to teach or suggest all of the claim elements in a non-final Official Action.

However, in the outstanding Official Action, the Examiner fails to address these arguments, asserting they are moot in view of the new grounds of rejection, which is entirely inconsistent with the fact that the Examiner asserted the same reliance on the *Susai et al.* reference in support of his rejection of the claim.

Finally, in the previous Official Action, with regard to the Examiner's rejection of claim 11, the Examiner asserted that *Susai et al.* teaches the calculating step, citing to the same references the Examiner relied upon in teaching the calculating step as set forth in claim 9. Applicants argued, however, that claim 11 recites, *inter alia*, a method for collecting statistical traffic data comprising calculating, as an FTP throughput at a side which sent the detected SYN+ACK segment, a ratio of a difference, between an acknowledgement number of the first detected ACK segment and an acknowledgement number of the last detected ACK segment, to a time difference from the first detection of the ACK segment to the last detection of the ACK segment.

Applicants further argued that the Examiner's citations to the *Susai et al.* reference were insufficient to teach, and do not even mention, calculating, as an FTP throughput, a ratio of a difference as recited in claim 11. The Applicants noted to the Examiner that they were unclear which portions of the reference the Examiner is

relying upon to teach or suggest this claim element, and requested that, should the Examiner maintain this rejection, the Examiner provide a detailed explanation outlining a *prima facie* case of obviousness under 35 U.S.C. § 103 in a new, non-final Official Action.

However, in the outstanding Official Action, the Examiner fails to address these arguments, asserting they are moot in view of the new grounds of rejection even though the Examiner asserts the same rejection.

Applicants respectfully direct the Examiner's attention to the arguments included in the November 2nd Reply and submit that they are not moot in view of any new grounds of rejection. Further, Applicants respectfully request that the Examiner consider the arguments included herein, together with the arguments set forth in the Reply of November 2nd, and, should the Examiner maintain his rejection of the claims, that he provide an appropriate response to these arguments in a new non-final Official Action.

In addition to the above arguments, Applicants respectfully submit that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. §103(a) by failing to provide proper motivation with regard to his rejection of independent claims 2-12.

For all of the reasons set forth above, Applicants maintain that the Examiner has failed to establish *prima facie* obviousness under 35 U.S.C. §103 and, thus, Applicants respectfully request

that the outstanding rejection with regard to claims 1-12 be withdrawn.

Conclusion

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Catherine M. Voisinet (Reg. No. 52,327) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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